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IN THE

Supreme Court of the United States

October Term, 1968

No. 1029

JOHN J. DELURY, Individually and as President, JOHN J. CONROY, Individually and as Treasurer, etc., of UNIFORMED SANITATIONMEN'S ASSOCIATION, LOCAL 831, INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND CHAUFFEURS, etc.,

Appellants,

vs.

THE CITY OF NEW YORK,

Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS APPEAL

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Appellants,

vs.

THE CITY OF NEW YORK,

Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS APPEAL

The appellee moves pursuant to Rule 16 of the Rules of the Supreme Court of the United States to dismiss the appeal on the ground that some of the questions presented were not raised in the courts below and all of them are so unsubstantial as not to need further argument.

Statement of the Case

An action for a permanent injunction to restrain the Uniform Sanitationmen's Association (the Union) and its officers and members from engaging in a strike, or instigating or encouraging a strike, was instituted in Supreme Court, New York County, on February 2, 1968. Ancillary to this action, an application for a preliminary injunction was made by order to show cause issued the same day. The order to show cause contained a temporary restraining order in the identical terms of the ultimate relief sought, coupled with a direction to the officers of the Union to instruct its members not to engage in any strike against the City of New York.

The motion for a preliminary injunction was granted and an order was entered thereon on February 5, 1968, in the same terms as those of the temporary restraining order.

Motions were made to punish the Union and certain of its officers, including its president, appellant DeLury, for criminal contempt of court based upon their wilful disobedience to the injunction provisions contained in the temporary restraining order and the preliminary injunction order. The contempt proceedings were consolidated and tried without a jury (none was demanded) commencing on February 6th. They resulted in the convictions of DeLury and the Union which are the subject of this appeal.

The convictions were unanimously affirmed without opinion by the Appellate Division of the Supreme Court (30 A D 2d 781). The order of the Appellate Division was

unanimously affirmed by the New York Court of Appeals, three of the judges concurring insofar as the right to a jury trial was concerned (23 N Y 2d 175), on constraint of the Court of Appeals' decision in *Rankin* v. *Shanker*, 23 N Y 2d 111 (Appenidx B to Juris. Statement).

The Strike:

In January, 1968, a panel of mediators was appointed with the agreement of the City and the Union in an effort to culminate negotiations for the renewal of a collective bargaining agreement. By January 31st the panel had formulated a proposal for settlement which was acceptable to the City, but was rejected by the Union stewards (205),* who, thereupon, called for a demonstration in front of City Hall at 7:00 A.M. on Friday, February 2nd (41). This demonstration took place as scheduled and signalled the beginning of a nine day strike.

At 7:00 A.M. on February 2, 1968, some 4,500 sanitationmen were scheduled to report for duty. It is a conceded fact that 99% of them, without excuse, failed to report (75). They gathered, instead, in City Hall Park to demonstrate their determination not to work unless their demands were met. They were addressed by their president, John J. DeLury, in the following language, the authenticity of which is not challenged (Pl. Ex. 1, 85-86):

> "Your sentiments before was go-go-go. I'd accept a motion for go-go-go (cheers). All in favor signify by saying yes (cheers). All opposed (boos). I didn't come here to bargain, I took a firm position with the City, I gave the members a final offer of this union.

* Numbers in parentheses refer to pages in the Record on Appeal.

> Now I want to show discipline here this morning—or this afternoon—I don't want to show where there is confusion in the members—You got a job at the locations to see that this is effective 100% (cheers)."

Thereafter, virtually none of the sanitationmen reported for duty until the termination of the strike at 8:00 P.M. on February 10th (87, 88, 131, 156, 157), except that, on February 7th, some 500 volunteers collected hospital refuse (133).

Garbage, which accumulated in the streets of the City at the rate of 10,000 tons a day (89), was characterized by the Commissioner of Health as a serious health threat (101), and by the Chief of the Fire Department as the cause of a serious increase in the incidence of fires (108).

The Contempt:

Upon the commencement of the strike on February 2nd, appellee obtained a temporary restraining order which was served upon the attorneys for the appellants shortly before 5:00 P.M. These facts were immediately communicated to the officers of defendant Union who were attending a meeting at the Downtown Athletic Club (187).

Despite the clear mandate of the injunction and the direction to the Union officers to instruct the members not engage in a strike, compliance was neither effected nor attempted. On the contrary, appellants stipulated that if particular sanitationmen were called, "they would testify that they did not receive any instructions from Mr. DeLury to go back" (110). As the Court of Appeals pointed out, the City was ready to call ten witnesses (23 NY 2d 175,

181, note 4). The plan was to issue 100 subpoenas to employees selected at random. Jack Bigel, the Union's "consultant", who spent as many as 22 hours a day with DeLury during the strike (92), testified that after the first injunction order, DeLury did not give any instructions in his presence to any Union member with respect to engaging in any strike and that he had no knowledge of Mr. DeLury asking anybody else to give any such instructions in his behalf (94).

Appellants' claim (Juris. Statement, pp. 9, 30) that the other individual defendants were acquitted on the identical evidence offered as to DeLury, is false. Neither the incriminating stipulation nor the Bigel testimony named any other officer in relation to any evidence of contempt.

DeLury suggests that it is somehow wrong to punish him for failing to comply with the court orders directing the Union officers to instruct all Union members to return to work because he did not have it within his power to do so (Juris. Statement, p. 28). The fallacy in this argument is that DeLury could have complied with the court order by giving the required instruction in good faith regardless of whether he had the power to secure compliance.

The further statement that the record demonstrates that DeLury counseled against strike action (Juris. Statement, p. 28) is not supported by any reference to the record or by the record itself.

The wilful concerted action of the Union in manifest disobedience to the two orders was shown, among other things, by the unexcused absence of virtually 100% of its membership for eight days after the issuance of the injunc-

tion. The Union produced nothing to justify their refusal to obey the Court's orders. The only evidence adduced related to alleged extreme provocation of the strike, which, under the governing statute, could have been considered only in mitigating the penalties against the Union.

Conduct of the Trial:

Appellants now assert, in passing, that they were "forced on trial upon less than 24 hours' notice" (Juris. Statement, pp. 7, 24). They refer to the denial of appellant Union's application for an adjournment on February 5th. They ignore the proceedings on February 6th, when, with defendants' consent, the return date of the motion to punish DeLury for contempt was advanced from February 7th to February 6th and consolidated with the motion to punish the Union. The trial began without objection (pp. 83-84).

Similarly, the claim that the trial judge was prejudiced (Juris. Statement, p. 24) is not supported by the record. Indeed, the purpose for repeating this baseless charge of prejudice in this Court is not clear, since appellants have not dignified it either here or in the state courts by asserting a separate claim that either order and mandate should be reversed on this ground.

The Sentence:

Appellant DeLury was sentenced to 15 days in jail and fined $250 under Section 751(1) of the Judiciary Law which provides a maximum sentence of 30 days and a maximum fine of $250. Appellant made no application for a stay pending appeal and has served his sentence.

Appellant Union was fined the maximum authorized daily amount of $10,000 for each of the last eight days of the strike (a total of $80,000) and its dues check-off privilege was suspended for the maximum period of eighteen months, all pursuant to Section 751(2) of the Judiciary Law. The punishment of the Union is stayed pending disposition of this appeal.

POINT I

With a single exception, New York tries all categories of criminal contempt cases without a jury. To remedy abuses which arose in criminal contempt proceedings brought in cases arising out of private labor disputes, it provided for jury trials in such cases only. The absence of such a jury trial exception for cases arising out of strikes by governmental employees does not deny equal protection, at least where there have been no similar abuses.

(1)

Appellants did not demand a jury trial and no question with regard to a jury was raised in the court of first instance.

The first reference in this case to jury trials was in appellants' letter to the Appellate Division dated May 27, 1968 in which they contended that *Bloom* v. *Illinois,* 391 U. S. 194 (1968), required reversal of the contempt adjudications despite the absence of a jury demand. After this Court held in *DeStefano* v. *Woods,* 392 U. S. 631 (1968), that *Bloom* v. *Illinois* would not be applied to trials which began prior to May 20, 1968, the Appellate Division affirmed without opinion.

Appellants made the same argument in the New York Court of Appeals and added an argument that they were entitled to a jury under New York's so-called Little Norris-LaGuardia Act. Both arguments were considered and rejected by the Court of Appeals.

In their Jurisdictional Statement appellants now place their entire reliance on an argument which they make for the first time—that they were entitled to a jury trial under the equal protection clause. Appellants do not refer to any point in the record or in the appellate proceedings below at which the equal protection argument was raised, nor do they claim specifically that they raised it below. They do seem to suggest, however (Juris. Statement, p. 11), that the Court of Appeals passed on this argument even though it was not raised.

An examination of the Court of Appeals' opinion, however, reveals that its references to the equal protection doctrine had bearing only on the propriety of the legislative classification which differentiated between strikes by public and private employees by banning the former. The opening sentence of the Court's opinion refers to its earlier opinion in *Rankin* v. *Shanker,* 23 N Y 2d 111 (1968), to dispose of the claims, made in both cases, that the appellants were entitled to a jury trial both under the New York statute and under the doctrine of *Bloom* v. *Illinois.* The second sentence of the Court's opinion refers to a discussion of the equal protection doctrine in *Rankin* v. *Shanker,* not on the issue of jury trial, but on the issue of a right to strike, as is evident from the limited page reference to that case.

All of the discussion of the equal protection clause in the Court's opinion pertains exclusively to appellants'

contention that the Taylor Law's continuance of the ban on strikes by public employees offended the equal protection clause of the state and federal constitutions. When the Court returned to the jury trial question (23 N Y 2d at p. 187), it was only to address itself to the question of the construction of the Little Norris-LaGuardia Act.

Appellants' failure to demand a jury is particularly significant in view of the care which this Court has taken to point out that a jury trial was demanded in *Bloom* v. *Illinois,* 391 U. S. at pp. 195, 197, 198, 210. See, also, *Dyke* v. *Taylor Instrument Co.,* 391 U. S. at p. 217; *Duncan* v. *Louisiana,* 391 U. S. at p. 146. Presumably, the same approach would be followed where the claim was grounded in the equal protection clause and where, as here, the appellants, unlike the petitioner in *Baxstrom* v. *Herold,* 383 U. S. 107 at p. 109n (1966), were represented by counsel.

We now proceed to a discussion of the legal principles involved in the claimed denial of equal protection even though no jury was demanded and even though the equal protection argument, on which appellants now place their sole reliance, was not raised or passed on in the state courts.

(2)

Under the New York Constitution there is no requirement that there be a trial by jury in criminal contempt proceedings. *People ex rel. Frank* v. *McCann,* 253 N.Y. 221 (1930). See *Rutherford* v. *Holmes,* 5 Hun 317, 319 (1875). Section 750, subd. A, par. 3, of the New York Judiciary Law provides that a court of record has power to punish for criminal contempt a person guilty of wilful

disobedience of its lawful mandate. This provision for trial of a criminal contempt by the court has been in the statutory law of New York since 1829. See NELLES, *Summary Power to Punish for Contempt,* 31 Col. Law Rev. 956, 967 (1931); 13TH ANNUAL REPORT OF THE NEW YORK JUDICIAL COUNCIL at p. 253. See, as to earlier periods, *United States* v. *Barnett,* 376 U. S. 681, 714-716 (1964).

We are not aware of any case or statute requiring a trial by jury in a criminal contempt proceeding in New York until the enactment of the Little Norris-LaGuardia Act in 1935.* This legislation was adopted shortly after the enactment of the federal Norris-LaGuardia Act** and was patterned on the federal law. Like the federal law it provides for trials by jury in contempt proceedings arising out of failure or refusal to obey any mandate of an injunction granted in any case involving a labor dispute (N.Y. Judiciary Law, §753-a; N.Y. Labor Law, §808). These statutes and their provisions relating to contempt proceedings have been construed as being applicable only to employees in private industry and not to those in public employment. *Rankin* v. *Shanker,* 23 N Y 2d at p. 115. In so ruling, the New York court followed a similar construction of the federal statute in *United States* v. *Mine Workers,* 330 U. S. 258, 298 (1947), and an earlier construction of the New York statute, *Jewish Hospital of Brooklyn* v. *Doe,* 252 App. Div. 581 (1937).†

* New York Laws 1935, chapters 298, 299, 477. Civil Practice Act, §882-a, enacted by chapter 298 is now to be found in New York Labor Law, §808. Civil Practice Act, §867-a, enacted by chapter 477 is now to be found in New York Labor Law, §807.

** 47 U.S. Stat. 70; 29 U.S.C. §§101-115; 18 U.S.C. §3692.

† Other state courts have uniformly followed the *Mine Workers* construction in cases involving the injunctive provisions of statutes

The enactment of the federal and New York legislation had been preceded by a long history of what was regarded by many, including the proponents of the federal bill, as abuses by the courts in the issuance and enforcement of labor injunctions. An outstanding example was the lower court order which found Samuel Gompers, president of the American Federation of Labor, guilty of contempt for violating an injunction and sentenced him to a year of imprisonment. This Court reversed in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911). Another notable example was *In re Debs*, 158 U. S. 564 (1895). Cf. *Drivers' Union* v. *Lake Valley Co.*, 311 U. S. 91, 101 (1940). See FRANKFURTER & GREENE, *The Labor Injunction* (1930); GREEN, *Legal Aspects of the Labor Movement*, 15 Ore. Law Rev. 13 (1935). These abuses were discussed in the Congressional debates on the Norris-LaGuardia Act. See, e.g., 75 Cong. Rec. 4774, 5478, 5495, 5499-5500.

At the time of the enactment of the labor legislation thus far discussed, there was no history of similar abuses

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patterned on the Norris-LaGuardia Act. *City of Minot* v. *General Drivers & Helpers Union*, 142 N.W. 2d 612 (N.D., 1966); *Del. Riv. & Bay Auth.* v. *Int'l Org. of Masters, Mates & Pilots*, 45 N.J. 138, 211 A. 2d 789 (1965); *Hansen* v. *Commonwealth*, 344 Mass. 214, 181 N.E. 2d 843 (1962); *City of Pawtucket* v. *Pawtucket Teachers Alliance*, 87 R.I. 364, 141 A. 2d 624 (1958), as well as the jury trial provisions in *In re Block*, 50 N.J. 494, 236 A. 2d 589 (1967) (jury trial demanded). *Board of Education* v. *Public School Employees Union*, 233 Minn. 144, 45 N.W. 2d 797 (1951), is only apparently to the contrary since the state statute involved departed from the Norris-LaGuardia format by expressly excepting some but not all public employees from its provisions. All of these cases except *Hansen* and *Block* were appeals from the injunctive order. In *Hansen*, appellants appealed from contempt convictions on the ground that the Little Norris-LaGuardia provisions were not complied with in the issuance of the injunction. The contempt trial appears to have been without a jury, but no issue was raised on this score.

in respect to public employees. No mention of abuses involving public employees is found in FRANKFURTER & GREENE, *supra*. The Congressional debates make no reference to abuses in respect to public employees and show that the federal act was not intended to apply to federal (75 Cong. Rec. 5503) or municipal (75 Cong. Rec. 5499) employees, or to government employees in general (75 Cong. Rec. 5464, 5509). In fact, there had been little or no occasion for the courts to deal with them or their organizations in connection with labor disputes. It was not until 1947 that the threat of strikes by some public employee groups resulted in New York legislation barring strikes by public employees and providing punishment for violation of the prohibition (New York Laws 1947, ch. 391). This legislation, the so-called Condon-Wadlin Law, contained no provision with regard to injunctions, and it did not provide any special treatment of contemnors such as that contained in the Little Norris-LaGuardia Act. This was understandable since there was no background of judicial abuse with respect to public employees such as had preceded the legislation to protect employees and their unions in the private sector some years earlier.

In 1967 the Condon-Wadlin Law was replaced by the Taylor Act (New York Laws 1967, ch. 392). This was a more elaborate attempt to deal with public employee labor relations. It provided methods by which public employees and their unions could present their grievances and bargain collectively. At the same time it continued the prohibition against strikes by public employees.

The Taylor Act made only two changes which affected previous law as to contempt. Civil Service Law §211 man-

dated the chief legal officer of the affected government to apply forthwith for an injunction against an actual or imminent strike, or instigation or encouragement thereof, and to apply forthwith to punish violation of the injunctive order. Judiciary Law §751 was amended by adding a new subdivision (2) which is applicable only to public employee unions. It provided additional financial penalties* and set forth the factors to be considered in mitigation thereof.

As in the Condon-Wadlin Law, no provision was made in the Taylor Act for trial by jury. Nothing in the history of the prior Condon-Wadlin Law had indicated a need for jury trials. Injunctions had been issued against strikes by public employees, but we are unaware of any case where punishment for contempt was drastic or was imposed in the absence of a clear violation.

(3)

Appellants argue, however, that the failure to offer them a trial by jury constitutes a denial of equal protection of the laws. They do not assert that all persons charged with criminal contempt for violating injunctions are entitled to jury trials. It is their contention that violators of injunctions against strikes by public employees are so similar to violators of the more limited injunctions against activities relating to strikes by private employees that to provide jury trials for the latter and not for the former violates the constitutional mandate.

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* From 1829 to date, the maximum penalty which could be imposed under the Judiciary Law and its predecessors upon *individuals* for criminal contempt, regardless of the nature of the contempt or the nature of the perpetrator, has remained at 30 days in jail and a $250 fine.

Legitimate classifications, however, may be drawn among groups which superficially appear to be similar. As was pointed out by Mr. Justice HOLMES in *Patsone* v. *Pennsylvania,* 232 U. S. 138, 144 (1914):

> "A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class."

Legislation aimed at a particular evil may except from its application a sub-class with regard to which the evil is not so pronounced. "Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think." *Williamson* v. *Lee Optical Co.,* 348 U. S. 483, 489 (1955). To the same effect are *Railway Express* v. *New York,* 336 U. S. 106, 110 (1949), *A. F. of L.* v. *American Sash Co.,* 335 U. S. 538, 541-542 (1949), and numerous other cases.

In *Zucht* v. *King,* 260 U. S. 174, 177 (1922), Mr. Justice BRANDEIS wrote for a unanimous court that "in the exercise of the police power classification may be freely applied and that regulation is not violative of the equal protection clause merely because it is not all-embracing." In *McGowan* v. *Maryland,* 366 U. S. 420 (1961), this Court stated (pp. 425-426):

> "Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's

> objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

It has been held that it is permissible to abridge the right of trial by jury in the major city of a state without making a similar provision for the counties of the state. *Chappell Chemical & Fertilizer Company* v. *Sulphur Mines Company* (No. 3), 172 U. S. 474 (1899). See *Missouri* v. *Lewis*, 101 U. S. 22, 31 (1879); *Salsburg* v. *Maryland*, 346 U. S. 545, 551 (1954).

Railway Mail Assn. v. *Corsi*, 326 U. S. 88 (1945), upheld the validity of the application to a federal employee organization of a civil rights law provision barring discrimination in admissions to membership in a labor organization. In rejecting an argument that equal protection was denied because another statute, which conferred rights on labor organizations with respect to organization and collective bargaining, excluded from its operations labor organizations whose members are "employees of the State", the Court said (p. 95):

> "A state does not deny equal protection because it regulates the membership of appellant but fails to extend to organizations of government employees provisions relating to collective bargaining. Under customary practices government employees do not bargain collectively with their employer. The state may well have thought that the problems arising in connection with private employer-employee relationship made collective bargaining legislation more urgent and compelling than for government employees. Cf. *Labor Board* v. *Jones & Laughlin Corp.*, 301 U. S. 1, 46."

(4)

Before discussing the distinctions between public and private employers which justify the classification here under attack, we note the general rules that the burden of establishing unconstitutionality of a statute rests on the party who assails it and that a "statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." *Metropolitan Co.* v. *Brownell,* 294 U. S. 580, 584 (1935).

The primary factor justifying the distinction in the Norris-LaGuardia Act and in its state counterparts between employees in the private sector and governmental employees is the evil which these laws sought to correct. As appears from the authorities referred to *supra,* pp. 11-12, at the time of enactment the courts were too willing to issue injunctions against labor, too prone to grant excessively broad injunctions and too ready to conclude that these injunctions had been violated. These essentially were the abuses which the enactment was designed to correct. As we have pointed out, no analogous abuses existed then or have arisen since in relation to public employees. Attention has previously been called to the numerous cases which hold that a remedy for an evil need not extend to areas in which it is of lesser proportions. Certainly it need not be extended to an area in which the evil has not been shown or even alleged to exist.

The legislative classification was not based, as appellants suggest, on a difference in the state's regard for the two types of employees or on a determination that one had

a lesser claim to constitutional protection (Juris. Statement, p. 21). On the contrary, the legislature was trying to provide that both types would receive equal treatment under law by removing the inequality resulting from the abuses it found.

The remedial legislation, insofar as it dealt with contempt proceedings, went no further than the narrow category in which the abuses had been found. These abuses had not arisen with respect to public employees or alimony debtors or any of the hundreds of other categories of actual or potential contemnors. There was, therefore, no reason for extending the special provision, which was being provided to remedy an existing evil, to these other categories. It was attempting to eliminate an evil and, in doing so, it limited its remedy to the area in which the evil existed. Nor was it elevating private sector employees and their unions to a preferred status. In essence, it was merely seeking to assure them treatment equal to that of other contemnors.

The suggestion that the legislation deprives the appellants of a jury trial right guaranteed by the federal constitution (Juris. Statement, p. 21) is inconsistent with the fact that appellants have abandoned such claim, asserted by them in the appellate courts below in reliance on this Court's opinion in *Bloom* v. *Illinois,* 391 U. S. 194 (1968).

The appellants' argument comes down to a claim that, if a jury trial is provided in contempt proceedings for one category, it must also be provided for all categories. If

equal protection were as simplistic a doctrine as appellants suggest, it would mean that a jury trial must be made available not only to public employees but to all of the hundreds of categories of possible criminal contemnors.

Appellants' thesis would confront legislatures with endless dilemmas. If all who come within a general category must be treated with mathematical sameness without the possibility of carving out lesser categories, legislation would have to go beyond the evil sought to be remedied. In this case, the legislature would have the choice of extending the jury trial and other provisions of the Little Norris-LaGuardia Act to many persons beyond the remedial purpose of the statute or of abandoning the remedial legislation altogether. Confronted with the requirement for such legislative over-kill, a landmark statute might never have been enacted or sustained—a result hardly beneficial to or even desired by public employees.

Another valid ground justifying the classification is the one referred to by the New York Court of Appeals in *Rankin* v. *Shanker*—the need for quick action "to deter the continuance of paralyzing public strikes by visiting speedy punishment on the offenders" (23 N Y 2d at p. 117). The Taylor Act recognizes the need for speed by directing that contempt proceedings be brought "forthwith." Former Governor Dewey pointed out, in support of the Condon-Wadlin Act that a strike by firemen could result in the overnight destruction of a whole city, one by policemen could endanger the lives and property of millions of people, and one by sanitation men could "produce an epedimic threaten-

ing the lives of other millions of people'' (Memorandum of Governor Dewey, New York Legislative Annual, 1947, pp. 36-37).

The legislature could have reasonably concluded that a jury trial in contempt proceedings arising from a public employee strike would, in most instances, lead to extended delay. There would be great difficulty in obtaining impartial jurors. Most strikes of public employees result in substantial danger or inconvenience to the public generally. In the instant case it would have been extremely difficult, if not impossible, to find a juror in New York City who was not aware of the accumulating garbage by personal observation as well as from newspaper reports and editorials and who was not, at the least, annoyed by it.

In the 1968 teachers' strike in New York City, the issues so divided the community that it would also have been impossible to find a juror who did not have strong views.

As a result, defendants charged with contempt would be likely to request a continuance and a change of venue, with the delays inherent in the time required to hear and consider these applications. A change of venue would create further delay and other problems. Newspaper stories concerning the strike might prejudice juries outside the area in which the strike is occurring. A change of venue would require those officials of the City who were required to testify to remove themselves from the scene of their responsibilities at a time when they would be most needed to cope with problems arising as a result of the strike. Similarly, union officials who were required to testify would be absent at a time when their presence might lead to a termination of the strike by negotiation.

Private sector labor disputes are capable, of course, of being the subject of wide notoriety and inflamed passions, but the instances in which this occurs are comparatively few. Thus, the need for a speedy determination in the contempt proceeding is a reasonable basis for a legislature to distinguish between the two and to decline to extend the provisions of the Little Norris-LaGuardia Act for jury trials to public employees in the absence of a showing of a real need.

(5)

The cases of *Baxstrom* v. *Herold,* 383 U. S. 107 (1966), and *Griffin* v. *Illinois,* 351 U. S. 12 (1956), relied upon by appellants, are not inconsistent with our analysis. They hold that neither imprisonment nor poverty furnish a rational basis for classifying people as not entitled to procedural rights afforded to all others. In *Baxstrom*, the Court, in rejecting a contention that the classification was justified by the proven criminal tendencies of the allegedly insane prisoners, pointed out that the capriciousness of the classification was clearly revealed by the fact that the exception for prisoners was not applicable to persons with a past criminal record who were not in prison at the time of the institution of civil commitment proceedings (383 U. S. at pp. 114-115). The obvious absence of a rational basis for the classifications in *Baxstrom* and *Griffin* has no parallel in the instant case.

POINT II

Appellants' other points are insubstantial and most of them were not raised below.

(1)

Appellants' discussion of Question 2 contains a melange of comments about the weight of the evidence and the conduct of the trial. That these are frivolous is evident from our statement at pp. 4-6, *supra*.

Insofar as appellants raise the equal protection argument as to the alleged failure to apply to public employees another section of the Little Norris-LaGuardia Act, Labor Law §807(6), the authorities cited in Point I, *supra,* are dispositive. In addition, it should be pointed out that:

(1) Appellants did not allude to this section in the court of first instance.

(2) The Court of Appeals did not refer to the point except insofar as it characterized appellants' "other arguments" as "so tenuous as to require no comment." 23 N Y 2d at p. 188.

(3) Even if Labor Law §807(6) were made applicable, there would be no basis in the record for overturning the holding of the Court of Appeals as to the sufficiency of the evidence. It noted that (23 N Y 2d at p. 187):

> "What the proof convincingly demonstrated, the concession of the defendant's counsel rendered indisputable."

(2)

In their Questions 3 and 4, appellants contend that the Taylor Act deprived them, without due process, of life and property and equal protection of the laws by

(a) banning strikes by public employees,

(b) commanding them to work against their will and without just compensation, and

(c) excluding them "from the application of the State Labor Relations Laws and making no equivalent provision for payment of just compensation for the involuntary labor which it commands governmental workers to continue to perform for the government, against their will" (Juris. Statement, p. 48).

These arguments were not made in the court of first instance. If they had been, they would not have excused appellants' contempt. Even if the court of first instance had erred in issuing the two injunctive orders, it is undisputed that the court had jurisdiction of the person and the subject matter and therefore could punish wilful disobedience thereof. *Mt. Sinai Hospital* v. *Davis,* 8 A D 2d 361 (1959); *United States* v. *Mine Workers,* 330 U. S. 258, 293 (1947). This is true even where the order disobeyed is reversed on non-jurisdictional grounds prior to the adjudication for criminal contempt. *Matter of Cost,* 198 Misc 782 (1950), aff'd 277 App. Div. 1049 (1950), aff'd 304 N.Y. 800 (1952).

In any event, the constitutionality of statutes banning public employee strikes is well established. See *City of New York* v. *DeLury,* 23 N Y 2d 175, 181-187, and cases cited therein.

The statement that the Taylor Act commands the performance of work is false. The statute merely prohibits concerted work stoppages and concerted slow-downs (Civil Service Law §§210(1) and 201(10). The contention that the prohibition of such concerted action creates involuntary servitude was rejected in *Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 251 (1949).

(3)

The appeal as to appellants' Question 5 is not within the jurisdiction of this Court because not taken in conformity with 28 U.S.C. §1257(2). The validity of no state statute is drawn in question or even referred to in Question 5. No New York statute bans informational picketing or authorizes the enjoining of informational picketing. Indeed, the injunctive orders below do not enjoin informational picketing but only picketing for specified illegal purposes. *Thornhill* v. *Alabama*, 310 U. S. 88 (1940), and *N.A.A.C.P.* v. *Button*, 371 U. S. 415 (1963), upon which appellants rely, did involve state statutes, and these cases involved fact situations entirely different from those in the present case. Moreover, this question was not raised in the court of first instance or raised or considered in the state appellate courts.

CONCLUSION

The appeal from the order of the Court of Appeals of the State of New York should be dismissed.

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